IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10102 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DINMOHMED @ DINO @ DINYO JISUB DAFER

Versus

STATE OF GUJARAT

Appearance:

MR A.S. DAVE for Petitioner

MR URADI R BHATT, AGP, for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 30/11/2000

ORAL JUDGEMENT

1. Petitioner has through jail challenged the order of detention passed against him on 12th July, 2000, under the Gujarat Prevention of Anti Social Activities Act, 1985 (PASA for short) by District Magistrate, Amreli, in

exercise of powers conferred upon him under Sec. 3(1) of the PASA Act, by way of this petition under Article 226 of the Constitution of India. Detenu came to be detained in pursuance of this order from 20th July,2000.

2. The grounds of detention are not placed on record by the petitioner perhaps because he preferred petition through jail. However, learned AGP Mr. Udai Bhatt, assisted the court in this respect. The grounds reveal that in all six crimes came to be registered against the petitioner in various Police Stations of Amreli District and one before Gondal City Police Station, offences are registered under Sections 302, 380, 457, 379 of the IPC and Sec. 25(1)(C) of the Arms Act. The detaining authority took into consideration the investigation papers of the above said crimes registered against the petitioner and the statements of 10 witnesses, who on assurance of anonymity agreed to offer statements before the concerned authority. From the above material, detaining authority reached the subjective satisfaction that the petitioner was a "dangerous person" within the meaning of Sec. 2(c) of the PASA Act. The detaining authority considered that to prevent the illegal activities of the petitioner, the remedy available was only detention of the petitioner under the PASA Act and hence the present impugned order came to be passed by the detaining authority.

3. Learned Advocate Mr. A.S. Dave appointed for the petitioner and learned AGP Mr. Udai Bhatt for the respondents were heard.

4. Though various grounds urged to challenge the order of detention impugned, it clearly appears that the case of the petitioner is covered by the ratio laid down by this Court in the matter of BHUPATBHAI RAMJIBHAI VASAVA vs. DISTRICT MAGISTRATE, BHARUCH, reported in 1992 (2) GLH 350.

5. The detaining authority has made a reference that long time is likely to be consumed in taking proceedings for externment against the petitioner, and thereafter also, the detaining authority felt the likelihood of breach of externment order by the petitioner and, therefore, the detaining authority came to the conclusion that resorting to externment proceedings was of no avail. Needless to say that while the detaining authority refers to externment proceedings against the petitioner, the detaining authority refers to the proceedings under Sections 56 and 57 of the Bombay Police Act. In the similar circumstances, the Division Bench of this Court

in the matter of Bhupatbhai Ramjibhai (supra) held that Section 57 of the Bombay Police Act was not at all available to the detaining authority, the detaining authority considered the same as a less drastic remedy, which was non application of mind on the part of the detaining authority, vitiating the detention order. In Para-4, this Court observed as under :

" Now, Section 57 of the Bombay Police Act cannot apply as per the activities alleged in the grounds of detention because the petitioner is not convicted in a single offence at any time as envisaged by Section 57 of the Bombay Police Act. Section 57 of the Bombay Police Act will apply in case where the person is convicted of the offence mentioned in Section 57 of the Bombay Police Act and, therefore, the subjective satisfaction arrived at by the detaining authority is vitiated because of non-application of mind. "

6. In this case also, as aforesaid, when the detaining authority refers to externment proceedings, it could be only Sections 56 and 57 of the Bombay Police Act and these remedies were not available to the detaining authority as a less drastic remedy as per Section 56 also without resorting to the remedy available, merely observing that, the proceedings are likely to consume more time, would at least amount to improper application of mind. In this view of the matter, the order impugned passed against the petitioner under the PASA Act is required to be set aside.

7. In view of the above discussion, the detention order passed against the petitioner by the detaining authority - District Magistrate, Amreli on 12th of July, 2000 under the PASA Act is hereby ordered to be quashed and set aside. The petitioner - Din Mohmed @ Dilo Diniyo Jusab Dafer is ordered to be set at liberty forth with if he is not required to be detained for any other purpose. Rule is made absolute.

(J.R. Vora, J.)

p.n.nair